

# **EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

CISCO SYSTEMS, INC.,

Plaintiff,

v.

MOSAID TECHNOLOGIES INC., PHILLIP  
SHAER, AND JOHN LINDGREN,

Defendants.

C.A. No. 10-687 (GMS)

**MOSAID'S COVENANT NOT TO SUE**

MOSAID Technologies, Inc., on behalf of itself, its Affiliates,<sup>1</sup> and any successors in interest and successors in title (including any assignees or exclusive licensees) (collectively, all and/or any of the aforementioned entities and people are "MOSAID") to United States Patents Nos. 6,842,459; 7,636,373; 7,633,966; 7,016,368; 7,187,695; and 7,483,524 (hereinafter, the "Covenanted Patents") and U.S. Patent No. 7,292,600 (the "'600 Patent") as to claims 59, 83, 126, and 139, including any dependents thereof (hereinafter, the "Covenanted '600 Patent Claims"), hereby unconditionally and irrevocably covenants not to sue or otherwise hold Cisco Systems, Inc., Affiliates of Cisco Systems, Inc., Manufacturers of Cisco Systems, Inc.,<sup>2</sup> and distributors, resellers, officers, directors, attorneys, agents, employees, and/or suppliers of Cisco

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<sup>1</sup> "Party"/"Parties" as used herein refer to MOSAID and Cisco Systems, Inc.. "Affiliate" of Party shall mean and include any corporation, company, or other person or entity which in the past, currently, and/or in the future: (i) is under the Control of a Party hereto; (ii) has Control of a Party hereto; and/or (iii) is under common Control with a Party hereto. For purposes of this Affiliate definition, "Control" means that more than fifty percent (50%) of the controlled entity's shares or ownership interest representing the right to make decisions for such entity are owned or controlled, directly or indirectly, by the controlling entity or person. Without limitation, Affiliate shall include any joint venture in which a Party or its Affiliate has a controlling interest.

<sup>2</sup> "Manufacturer" shall mean any entity that directly or indirectly manufactures, whether in whole or in part, products or services of Cisco, including without limitation contract manufacturers, original design manufacturers, and original equipment manufacturers, involved in the design and/or manufacturing of any of Cisco's products.

Systems, Inc. (collectively, all and/or any of the aforementioned entities and people are “Cisco”) liable or accountable, either individually or collectively, for any infringement, whether direct or indirect, willful or otherwise, of any claim of the Covenanted Patents or of the Covenanted ’600 Patent Claims based upon the design, manufacture (including having manufactured for), use, sale, offer to sell, lease, offer to lease, advertising, or exportation from or importation into the United States of any of Cisco’s future, current, or former products and/or services.

MOSAID further hereby unconditionally and irrevocably covenants not to sue or otherwise hold liable or accountable direct or indirect purchasers or users of Cisco’s future, current, or former products and/or services for infringement (either direct or indirect) of any claims of the Covenanted Patents or of the Covenanted ’600 Patent Claims based upon the design, manufacture (including having manufactured for), use, lease, offer to lease, sale or resale, offer to sell or resell, or exportation from or importation into the United States, or advertising of Cisco’s future, current, or former products and/or services.

These covenants shall estop MOSAID from asserting liability against Cisco (either individually or collectively) for infringement (either direct or indirect) of any claim of the Covenanted Patents and/or the Covenanted ’600 Patent Claims for the design, manufacture (including having manufactured for), use, sale, offer to sell, lease, offer to lease, advertising, or exportation from or importation into the United States of any of Cisco’s future, current, or former products and/or services.

The covenants shall estop MOSAID from asserting liability against direct or indirect purchasers or users of Cisco’s future, current, or former products and/or services for infringement (either direct or indirect) of any claim of the Covenanted Patents and/or the Covenanted ’600 Patent Claims based upon the design, manufacture (including having

manufactured for), use, sale or resale, lease, offer to lease, offer to sell or resell, or exportation from or importation into the United States, or advertising of Cisco's future, current, or former products and/or services.

MOSAID irrevocably releases, acquits and forever discharges Cisco and direct and indirect customers and/or any other users of Cisco's future, current or former products and/or services from: (i) any and all claims or liabilities of any kind and nature, at law, in equity, or otherwise, that were or could have been brought against such persons in the above-captioned litigation or elsewhere with respect to the Covenanted Patents and/or Covenanted '600 Patent Claims; and (ii) every claim and cause of action of any kind whatsoever, including without limitation, claims arising out of facts which would be covered if they had occurred after the effective date of this Covenant Not To Sue, whether or not now known that MOSAID ever had, now has or hereafter can, shall or may have, based upon any events occurring prior to the effective date of this Covenant related to the above-captioned litigation with respect to the Covenanted Patents and/or Covenanted '600 Patent Claims.

The granting of these covenants and the release above shall not be construed as a license, implied or otherwise, to any claim or patent. The rights and covenants granted herein shall run with each of the Covenanted Patents and the '600 Patent as to the Covenanted '600 Patent Claims, and shall be binding upon any successors in interest and successors in title to any of the Covenanted Patents and/or the '600 Patent, and/or any rights thereto, including without limitation any assignees or exclusive licensees. These covenants do not constitute an admission by MOSAID that any claim of the Covenanted Patents and/or the Covenanted '600 Patent Claims is invalid, unenforceable or not infringed by Cisco in connection with the design, manufacture (including having manufactured for), use, sale, offer to sell, lease, offer to lease,

advertising, or exportation from or importation into the United States of any of Cisco's future, current, or former products and/or services. Nothing in this paragraph shall be construed to derogate the covenants extended herein to the Covenanted Patents and/or the Covenanted '600 Patent Claims.

This Covenant Not To Sue does not and is not intended to preclude, limit, or affect in any way, as to any named defendant, Cisco's claims brought pursuant to the Racketeer Influenced and Corrupt Organizations ("RICO") Act, under California Business And Professions Code Section 17200, related to unclean hands, and/or any other claims, defenses, or relief plead or requested by Cisco in its Second Supplemental and Amended Complaint ("SSAC"), filed on June 27, 2013 (D.I. 102), other than Counts Seven through Eighteen (see SSAC ¶¶ 181-228) and the relief corresponding thereto (see pp. 82-82, ¶¶ g-r) to the extent specifically described herein. However, Cisco agrees that it will not use the fact that MOSAID has provided this Covenant Not to Sue to support its arguments that MOSAID has violated the RICO Act and/or the California Business And Professions Code Section 17200.

MOSAID represents and warrants that MOSAID Technologies, Inc. owns the Covenanted Patents and the '600 Patent, that MOSAID has not transferred or caused to be transferred any claim subject to the covenants and releases contained herein, and that MOSAID has the authority to grant the covenants and releases extended herein. Any future assignment or other grant of any rights under or related to the Covenanted Patents or the '600 Patent, to be valid, must provide that any assignee or grantee agree in writing that such assignment or grant is made subject to all terms of this Covenant Not To Sue and MOSAID shall ensure that any such grant of rights includes obtaining such agreement in writing.

The undersigned acknowledges, stipulates, represents, and warrants that this Covenant Not To Sue shall upon delivery be immediately effective, absolute, unconditional, and uncontestable.

MOSAID Technologies, Inc.

By: /s/ Jiri Smetana

Name: Jiri Smetana

Title: Patent Litigation Manager

Dated: August 8, 2013

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